

**A His Royal Highness Sultan Ismail Petra Ibni Almarhum Sultan
Yahya Petra v His Royal Highness Tengku Mahkota Tengku
Muhammad Faris Petra & Anor and another suit**

B FEDERAL COURT (PUTRAJAYA) — SUIT NOS 1 OF 2010 AND 2 OF
2010
ZULKEFLI, RAUS SHARIF AND ABDULL HAMID EMBONG FCJJ
26 NOVEMBER 2010

C
*Constitutional Law — Sovereignty — Powers of ‘His Royal Highness’ — Whether
during incapacitation of Sultan and during pendency of Regency, Sultan may
exercise powers attributed to ‘His Royal Highness’ under the Constitution —*
D *Whether Sultan under incapacitation and during pendency of Regency has locus to
refer question of law to the Federal Court — Article LXIII(2) First Part &
art IV(4) Second Part of the Laws of the Constitution of Kelantan*

E *Constitutional Law — Sovereignty — Whether Regent, acting during Sultan’s
incapacitation entitled to assume for himself full powers of Sultan — Whether
Regent vested with all powers of ‘His Royal Highness’ — Whether there was any
distinction between powers exercised by Regent and powers exercised by reigning
Sultan — Royal prerogatives of Regent to appoint or revoke appointment of
members of Council of Succession — Article LXIII(2) First Part & art IV(4)*
F *Second Part of the Laws of the Constitution of Kelantan*

G Two petitions were filed by the petitioner. The petitioner, at the time of filing
of the petitions was the Sultan of Kelantan. In both petitions, the petitioner
challenged the authority of the first respondent, the Regent of the State of
Kelantan, the eldest son of the petitioner, in assuming the full power of the
Sultan of Kelantan, as if the petitioner was no longer the Sovereign of the State.
The petitioner’s principal complaint was focused on the first respondent’s
purported exercise of his discretionary powers as a Regent in revoking Tengku
Muhammad Fakhry Petra’s appointment as a member of the Council of
H Succession (‘the Council’) amongst others and in effecting the appointment of
other individuals as the new members of the Council. To the petitioner, the first
respondent was not empowered to exercise such a discretion in the
performance of his royal functions as a Regent in the revocation and
appointment of the members of the Council. The petitioner claimed that these
I powers can only be exercised by the petitioner personally as the Sultan of
Kelantan. Both petitions were filed pursuant to art LXIII(2) First Part and
art IV(4) Second Part of the Laws of the Constitution of Kelantan (‘the
Constitution’). In the first petition the petitioner sought the opinion of the
Federal Court and consequential orders in relation to the questions whether

the first respondent as the Regent, acting during the petitioner's incapacitation: (a) was entitled to assume for himself the full powers of the Sultan, to so conduct himself as if the petitioner was no longer the Sovereign of the State; and (b) had the power or authority: (i) to remove any member of the Council appointed by the petitioner; (ii) to appoint persons to be members of the Council; (iii) to confer any state titles, dignities and honours of the State of Kelantan; and (iv) to strip any person of any titles, dignities and honours of the state which the petitioner had conferred upon such person, or to degrade or withdraw any titles, dignities and honours the petitioner had conferred. In the second petition the petitioner sought the opinion of the Federal Court and consequential orders arising from the questions whether the first respondent as the Regent had the power or authority to: (a) restrict the petitioner's movement to within the confines of the Istana Mahkota, Kubang Kerian, Kelantan; (b) confine the movement of the petitioner to within the State of Kelantan; (c) impose restrictions on the petitioner's right to be medically treated by doctors, and at a hospital or other medical establishment, of his own choice; and (d) direct the Commander of Royal Malaysian Air Force, Gong Kedak Air Base, Terengganu not to allow the petitioner to be flown out of the State of Kelantan by any airplane from the Gong Kedak Air Base, Terengganu, except with the Regent's prior approval. Counsel for the first respondent raised a jurisdictional objection relating to the question of whether the petitioner had the jurisdiction to refer the questions of law to the Federal Court pursuant to art LXIII(2) First Part of the Constitution notwithstanding the fact that there existed a Regency in place. According to the first respondent, at the time of the filing of the two actions, the first respondent was the Regent of Kelantan and was defined as 'His Royal Highness' in accordance with the express provisions of art IV First Part of the Constitution. The first respondent was now His Royal Highness, Sultan of Kelantan.

Held, dismissing both the petitions with no order as to costs:

- (1) As the then Regent, the first respondent was vested with all the powers of 'His Royal Highness' within the meaning of the First Part and the Second Part of the Constitution. There is no distinction between the powers exercised by the first respondent when he was the Regent and the powers exercised by a reigning Sultan regardless of whether the first respondent was appointed by the Council or by the then Sultan of Kelantan (see para 14).
- (2) If the Council has the power conferred by the Constitution to choose and confirm the next Sovereign and determine the capacity of the Sultan of Kelantan himself, it would necessarily follow that a Regent appointed by the same Council would have the same power to exercise the royal functions provided under the Constitution (see para 16).

- A (3) Although the status of a Regent is not equal to a Sultan, Sovereign and
B Ruler of the State, nevertheless, the distinction between ‘Regent’ and
‘Sovereign’ does not have any effect on the royal prerogatives of the first
respondent to appoint or revoke the appointment of any members of the
Council under the Constitution and more importantly in seeking to refer
a question of law pursuant to art LXIII(2) First Part of the Constitution
(see para 18).
- C (4) The definition of ‘His Royal Highness’ includes the Regent. The
Constitution had envisaged for the Regent to have all the powers and to
carry out the royal functions as the Sultan of Kelantan would have had
the Sultan of Kelantan not been incapacitated. The contention that the
powers vested on a Regent in carrying out his royal functions are only
confined to the First Part of the Constitution was untenable in the
circumstances of the case. A Constitution being the supreme law of a
D state or federation has to be interpreted differently from ordinary statute
(see paras 23–24).
- E (5) During the incapacitation of the petitioner and during the pendency of
the Regency the petitioner may not exercise the powers of ‘His Royal
Highness’ under the Constitution. Due to the incapacitation of the
petitioner as the then Sultan of Kelantan, it was the Regent alone who
was to exercise the powers attributed to ‘His Royal Highness’ under the
Constitution. The petitioner may only exercise such powers upon
returning to the State of Kelantan and assuming office as the Sultan of
Kelantan. On the present facts, the petitioner did not do so upon
F returning to the State of Kelantan on or about March 2010. The
petitioner remained incapacitated and the first respondent continued to
act as the Regent. Therefore, the petitioner was not permitted to exercise
any power vested with ‘His Royal Highness’ whilst there existed a
Regency (see para 26).
- G (6) Therefore, the petitioner had no locus to refer a question of law to the
Federal Court pursuant to art LXIII(2) First Part of the Constitution
whilst the first respondent was the Regent, as the power to do so is vested
solely in the hands of the first respondent until the Regency is brought to
H an end and the petitioner resumes his role as the Sultan of Kelantan (see
para 27).

[Bahasa Malaysia summary]

- I Kedua-dua petisyen difailkan oleh pempetisyen. Pempetisyen, pada masa
memfailkan petisyen-petisyen tersebut adalah Sultan Kelantan. Dalam
kedua-dua petisyen, pempetisyen mencabar kuasa responden pertama,
Pemangku Raja Kelantan, anak sulung pempetisyen, dalam menjalankan kuasa
penuh Sultan Kelantan, sama seperti pempetisyen bukan lagi Pemerintah
Negeri tersebut. Aduan utama pempetisyen tertumpu kepada pelaksanaan

kuasa budi bicara responden pertama sebagai Pemangku Raja dalam membatalkan pelantikan Tengku Muhammad Fakhry Petra sebagai ahli Majlis Perajaan Negeri ('Majlis'), antaranya, dan dalam melantik individu-individu lain sebagai ahli baru Majlis tersebut. Kepada pempetisyen, responden pertama tidak berkuasa untuk melaksanakan budi bicara sedemikian dalam melaksanakan fungsi-fungsi dirajanya sebagai Pemangku Raja dalam membatalkan dan melantik ahli-ahli Majlis. Pempetisyen mendakwa bahawa kuasa-kuasa ini hanya boleh dilaksanakan oleh pempetisyen sendiri selaku Sultan Kelantan. Kedua-dua petisyen difailkan berikutan perkara LXIII(2) Bahagian Pertama dan perkara IV(4) Bahagian Kedua Undang-Undang Perlembagaan Tubuh Kerajaan Kelantan ('Perlembagaan'). Dalam petisyen pertama, pempetisyen memohon pendapat Mahkamah Persekutuan dan perintah-perintah berbangkit berkaitan persoalan sama ada responden pertama sebagai Pemangku Raja, memangku semasa ketidakupayaan pempetisyen: (a) berhak melaksanakan sepenuhnya kuasa Sultan, sama seperti jika pempetisyen bukan lagi Pemerintah Negeri itu; dan (b) mempunyai kuasa: (i) untuk mengeluarkan mana-mana ahli Majlis yang telah dilantik oleh pempetisyen; (ii) melantik individu menjadi ahli Majlis; (iii) menganugerahkan gelaran, darjat kebesaran dan penghormatan Kerajaan Negeri Kelantan; dan (iv) melucutkan gelaran, darjat kebesaran dan penghormatan negeri yang mana pempetisyen telah anugerahkan kepada orang tersebut, atau merendahkan atau menarik semula gelaran, darjat kebesaran dan penghormatan yang telah dianugerahkan pempetisyen. Dalam petisyen kedua, pempetisyen memohon pendapat Mahkamah Persekutuan dan perintah-perintah berbangkit daripada persoalan sama ada responden pertama sebagai Pemangku Raja mempunyai kuasa untuk: (a) menghadkan pergerakan pempetisyen dalam kawasan Istana Mahkota, Kubang Kerian, Kelantan, (b) menghadkan pergerakan pempetisyen dalam negeri Kelantan; (c) mengenakan sekatan ke atas hak pempetisyen untuk dirawat oleh doktor-doktor, dan di hospital atau pusat perubatan pilihannya; dan (d) mengarahkan Komander Tentera Udara Diraja Malaysia, Pangkalan Gong Kedak, Terengganu untuk tidak membenarkan pempetisyen diterbangkan keluar negeri Kelantan dengan kapal terbang dari Pangkalan Gong Kedak, Terengganu, kecuali dengan perkenan Pemangku Raja. Peguam responden pertama membangkitkan bantahan bidang kuasa berkaitan persoalan sama ada pempetisyen mempunyai bidang kuasa untuk merujuk persoalan perundangan kepada Mahkamah Persekutuan berikutan perkara LXIII(2) Bahagian Pertama Perlembagaan tanpa mengambilkira fakta bahawa wujudnya Pemangku Raja. Menurut responden pertama, pada masa memfailkan kedua-dua tindakan tersebut, responden pertama merupakan Pemangku Raja Kelantan dan digelar sebagai Duli Yang Maha Mulia berikutan dengan peruntukan nyata perkara IV Bahagian Pertama Perlembagaan. Responden pertama kini merupakan Duli Yang Maha Mulia Sultan Kelantan.

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Diputusan, menolak kedua-dua petisyen tanpa perintah untuk kos:

- (1) Sebagai Pemangku Raja pada masa itu, responden pertama dikurniakan

- A kesemua kuasa Duli Yang Maha Mulia dalam maksud Bahagian Pertama dan Kedua Perlembagaan. Tiada perbezaan antara kuasa yang dilaksanakan oleh responden pertama apabila baginda merupakan Pemangku Raja dan kuasa yang dilaksanakan oleh Sultan yang memerintah tanpa mengambilkira sama ada responden pertama dilantik oleh Majlis atau Sultan Kelantan (lihat perenggan 14).
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- C (2) Jika Majlis mempunyai kuasa yang diberikan oleh Perlembagaan untuk memilih dan mengesahkan Pemerintah berikutnya dan menentukan kapasiti Sultan Kelantan, maka tentunya Pemangku Raja yang dilantik oleh Majlis yang sama akan mempunyai kuasa yang sama untuk melaksanakan fungsi-fungsi diraja yang diperuntukkan di bawah Pelembagaan (lihat perenggan 16).
- D (3) Walaupun kedudukan Pemangku Raja tidak sama dengan Sultan, Pemerintah dan Raja sesebuah negeri, perbezaan antara Pemangku Raja dan Pemerintah tidak mempunyai kesan ke atas prerogatif diraja responden pertama untuk melantik atau membatalkan pelantikan mana-mana ahli Majlis di bawah Perlembagaan dan yang lebih penting ialah memohon untuk merujuk persoalan perundangan kepada perkara LXIII(2) Bahagian Pertama Perlembagaan (lihat perenggan 18).
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- F (4) Maksud Duli Yang Maha Mulia termasuklah Pemangku Raja. Perlembagaan telah menjangkakan bahawa Pemangku Raja harus memiliki kesemua kuasa tersebut untuk melaksanakan fungsi-fungsi dirajanya sebagai Sultan Kelantan sama seperti jika Sultan Kelantan berupaya. Hujahan bahawa kuasa yang diberikan kepada Pemangku Raja dalam menjalankan fungsi-fungsi dirajanya hanya terangkum dalam Bahagian Pertama Perlembagaan tidak dapat dipertahankan dalam keadaan kes ini. Suatu Perlembagaan yang menjadi undang-undang tertinggi negeri atau persekutuan harus ditafsirkan berbeza dengan statut biasa (lihat perenggan 23–24).
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- H (5) Semasa ketidakupayaan pempetisyen dan semasa Pemangku Raja berkuasa, pempetisyen tidak boleh melaksanakan kuasa Duli Yang Maha Mulia di bawah Perlembagaan. Disebabkan ketidakupayaan pempetisyen sebagai Sultan Kelantan, hanya Pemangku Raja boleh melaksanakan kuasa Duli Yang Maha Mulia di bawah Perlembagaan. Pempetisyen hanya boleh melaksanakan kuasa tersebut apabila kembali ke negeri Kelantan dan mengambil alih tugas sebagai Sultan Kelantan. Atas fakta-fakta ini, pempetisyen tidak berbuat demikian apabila pulang ke negeri Kelantan pada bulan Mac 2010. Pempetisyen masih tidak berupaya dan responden pertama terus menjadi Pemangku Raja. Oleh itu, pempetisyen tidak dibenarkan melaksanakan apa-apa kuasa yang dikurniakan kepada Duli Yang Maha Mulia sementara Pemangku Raja masih ada (lihat perenggan 26).
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- (6) Oleh itu, pempetisyen tiada locus untuk merujuk persoalan perundangan kepada Mahkamah Persekutuan berikutan perkara LXIII(2) Bahagian Pertama Perlembagaan sementara defendan pertama menjadi Pemangku Raja, disebabkan kuasa untuk berbuat sedemikian dikurniakan hanya kepada responden pertama sehingga Pemangku Raja dilucutkan dan pempetisyen memangku semula peranannya sebagai Sultan Kelantan (lihat perenggan 27).]

Notes

For cases on constitutional law generally, see 3(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 1871–2421.

Cases referred to

Dato' Seri Ir Hj Mohammad Nizar bin Jamaluddin v Dato' Seri Dr Zambry bin Abdul Kadir (Attorney General, intervener) [2010] 2 MLJ 285, FC (refd)
Hinds & Ors v The Queen; Director of Public Prosecutions v Jackson; Attorney General of Jamaica (Intervener) [1976] 1 All ER 353, PC (refd)
Tengku Muhammad Fakhry Petra Ibni Sultan Ismail Petra v Yang Maha Mulia Pemangku Raja Kelantan & Ors [2011] 1 MLJ 128, HC (fold)

Legislation referred to

Laws of the Constitution of Kelantan First Part, arts IV, VI, X, XI, XII, XIII, XV(2)(b), (2)(f), (2)(g), XVI, XXVIIA, LXIII, LXIII(2), Second Part, arts IV, IV(4), VII, VIIA, IX, XXIIA, XXIIA(1)(a), (1)(b), (1)(c), (2), (3), (4), (5), XXXVI, XLIII, XLIV

Azhar bin Azizan @ Harun (Abdul Rashid Ismail with him) (Rashid Zulkifli) for the petitioner.
Cecil Abraham (Sunil Abraham and Farah Shuhadaa Razali with him) (Zul Rafiq & Partners) for the first respondent.
Azlan bin Abdul Halim (State Legal Adviser of Kelantan) for the second respondent.
Azizah Nawawi (Suzana Atan with her) (Senior Federal Counsel, Attorney General's Chambers) for watching brief.

Zulkefli FCJ (delivering judgment of the court):

INTRODUCTION

[1] There are two suits filed by way of a petition by the petitioner: Suit No 1 of 2010 ('the first petition') and Suit No 2 of 2010 ('the second petition'). Both petitions have been consolidated. The petitioner, at the time of filing of these petitions is the Sultan of Kelantan. In both petitions, the petitioner is challenging the authority of the first respondent, the Regent of the State of Kelantan, the eldest son of the petitioner, in assuming the full power of the

A Sultan of Kelantan, as if the petitioner was no longer the Sovereign of the State. The petitioner in both petitions has also brought in the Government of the State of Kelantan, as the second respondent.

B [2] Both the petitions are filed pursuant to art LXIII(2) First Part and art IV(4) Second Part of the Laws of the Constitution of Kelantan seeking relief and opinion of the Federal Court on a number of framed questions. Article LXIII(2) First Part of the Laws of the Constitution of Kelantan provides as follows:

C (2) His Royal Highness may refer to the Federal Court for its opinion any question as to the effect of any provision of the Laws of the Constitution of the State which has arisen or appears to Him to be likely to arise, and the Federal Court shall pronounce in open court its opinion on any question so referred to it.

D Article IV(4) Second Part of the Laws of the Constitution of Kelantan is worded exactly the same as in the provision of art LXIII(2) First Part of the Laws of the Constitution of Kelantan.

E [3] In the first petition the petitioner is seeking the opinion of the Federal Court and consequential orders arising from the opinion pronounced in respect of the following questions:

F (a) whether the first respondent as the Regent of the State, acting during the petitioner's incapacitation, is entitled to assume for himself the full powers of the Sultan, to so conduct himself as if the petitioner was no longer the Sovereign of the State; and

(b) whether the first respondent as the Regent of the State of Kelantan, acting as such during the petitioner's incapacitation, has the power or authority:

G (i) to remove any member of the Council of Succession appointed by the petitioner;

(ii) to appoint persons to be members of the Council of Succession;

(iii) to confer any state titles, dignities and honours of the State of Kelantan; and

H (iv) to strip any person of any titles, dignities and honours of the state which the petitioner had conferred upon such person, or to degrade or withdraw any titles, dignities and honours the petitioner had conferred.

I [4] In the second petition the petitioner is seeking the opinion of the Federal Court and consequential orders arising from the opinion pronounced in respect of the following questions:

(a) whether the first respondent as the Regent has the power or authority to

restrict the petitioner's movement to within the confines of the Istana Mahkota, Kubang Kerian, Kelantan;

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(b) whether the first respondent as the Regent has the power or authority to confine the movement of the petitioner to within the State of Kelantan;

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(c) whether the first respondent as the Regent has the power or authority to impose restrictions on the petitioner's right to be medically treated by doctors, and at a hospital or other medical establishment, of his own choice; and

(d) whether the first respondent as the Regent has the power or authority to direct the Commander of Royal Malaysian Air Force, Gong Kedak Air Base, Terengganu not to allow the petitioner to be flown out of the State of Kelantan by any airplane from the Gong Kedak Air Base, Terengganu, except with the Regent's prior approval.

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BACKGROUND FACTS

[5] In support of the first petition the petitioner amongst others pleaded the following relevant facts:

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(a) The petitioner is the one and true Sovereign of the State of Kelantan.

(b) As the Sovereign of the State, the petitioner has the power to appoint and remove members of the Council of Succession. The Council of Succession plays an important role under the Laws of the Constitution of Kelantan — it is the Council of Succession that must confirm the successor to the throne of the state.

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(c) As at 14 May 2009, the following persons have been appointed by the petitioner to the Council of Succession:

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(i) Tengku Abdul Aziz bin Tengku Mohd Hamzah (Tengku Sri Utama Raja) — President;

(ii) Tengku Razaleigh bin Tengku Mohd Hamzah — Deputy President;

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(iii) Tengku Muhammad Fakhry Petra Ibni Sultan Ismail Petra (Tengku Temenggong Kelantan);

(iv) Dato' Tengku Rozan bt Al Marhum Sultan Yahya Petra;

(v) Dato' Tengku Faridah bt Al Marhum Sultan Ibrahim;

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(vi) Dato' Tengku Mohamad Rizam bin Tengku Abdul Aziz;

(vii) Dato' Hj Nik Sulaiman bin Dato' Hj Nik Daud (Dato' Bentara Kiri);

- A** (viii) Dato' Hj Nik Ishak bin Dato' Hj Nik Daud;
- (ix) Dato' Hj Wan Ismail bin Hj Wan Mohd Salleh;
- (x) Dato' Tengku Mahmood bin Tengku Abdul Hamid;
- B** (xi) Dato' Hj Daud bin Muhammad (Dato' Aria D'Raja);
- (xii) Ir Dato' Hj Wan Hashim bin Hj Wan Ahmad (Dato' Bentara Dalam);
- C** (xiii) Dato' Hj Yusoff bin Hj Mohd Othman (Dato' Biji Sura); and
- (xiv) Dato' Mohd Aiseri bin Alias.
- (d) As Sovereign, the petitioner also has the royal prerogative to confer titles, dignities and honours of the State of Kelantan upon individuals; and among the persons whom the petitioner has conferred such titles were:
- D** (i) Dato' Hj Ahmad Rusli bin Hj Iberahim;
- (ii) Dato' Tan Hua @ Tan Liang Chong;
- E** (iii) Dato' Wan Hassan bin Wan Zin; and
- (iv) Dato' Mohd Raihan bin Dato' Seri Dr Eusuff Teh.
- (e) On 14 May 2009, the petitioner was taken ill and admitted to the University Science Malaysia Hospital at Kubang Kerian, Kelantan. The petitioner was subsequently transferred to Mount Elizabeth Hospital in Singapore.
- F** (f) By reason of the petitioner's illness, Tengku Mahkota, the first respondent was appointed as Regent of the State by the Council of Succession on 24 May 2009.
- G** (g) On 15 September 2009 and 16 September 2009, the first respondent, purporting to exercise his power as Regent, removed the following members of the Council of Succession:
- H** (i) Dato' Hj Wan Ismail bin Hj Wan Mohd Salleh;
- (ii) Dato' Hj Nik Sulaiman bin Dato' Hj Nik Daud (Dato' Bentara Kiri);
- (iii) Ir Dato' Tengku Mahmood bin Tengku Abdul Hamid;
- I** (iv) Dato' Hj Yusoff bin Hj Mohd Othman (Dato' Biji Sura); and
- (v) Tengku Muhammad Fakhry Petra (Tengku Temenggong Kelantan).
- (h) The first respondent in purported exercise of his power as Regent, also

- striped the titles from individuals mentioned in para (d) hereof; namely: **A**
- (i) Dato' Hj Ahmad Rusli bin Hj Iberahim;
 - (ii) Dato' Tan Hua @ Tan Liang Chong;
 - (iii) Dato' Wan Hassan bin Wan Zin; and **B**
 - (iv) Dato' Mohd Raihan bin Dato' Seri Dr Eusuff Teh.
- (i) Between 24 May 2009 and 17 September 2009, the first respondent purporting to exercise his power as Regent, appointed the following persons as new members of the Council of Succession: **C**
- (i) Dato' Hj Hashim bin Dato' Hj Yusoff;
 - (ii) Dato' Hj Mohamed Shukri bin Mohamad (the State Mufti);
 - (iii) Dato' Tengku Hjh Salwani bt Al-Marhum Sultan Yahya Petra; **D**
 - (iv) Dato' Sukri bin Hj Mohamed;
 - (v) Dato' Hj Che Mohd Rahim bin Jusoh; and
 - (vi) Kol Dr Mohammad Razin bin Kamarulzaman.
- (j) On or about 4 March 2010, the petitioner was discharged from Mount Elizabeth Hospital and had since returned to the State of Kelantan. **E**
- (k) The petitioner claimed as he had just recently been discharged from hospital, he did not wish to have the usual public celebration of his birthday this year, preferring to celebrate it in a more private and quiet way. The petitioner's wish was made known to the first respondent, the Prime Minister of Malaysia and the Menteri Besar of the State of Kelantan on or about 17 February 2010. The petitioner also expressly informed the State Government of Kelantan and the first respondent that he would not be conferring any titles, dignities and honours this year pursuant to art XLIII Second Part of the Laws of the Constitution of Kelantan. **F**
- (l) In spite of the aforesaid declaration by the petitioner, the first respondent purporting to act in his capacity as Acting Sultan, continued with the preparations of, and on 30 March 2010 held a state function. **G**
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- A** (m) As part of the state function, the first respondent purporting to exercise his power as the Regent of the State, conferred various titles, dignities and honours to various individuals.
- B** (n) Even prior to the state function, the first respondent had on 24 March 2010, purporting to exercise his power as the Regent of the State, conferred the highest state title to the Yang Di Pertuan Besar Negeri Sembilan, Tuanku Muhriz Ibni Almarhum Tuanku Munawir at Istana Besar Seri Menanti, Negeri Sembilan.
- C** (o) The first respondent in purported exercise of his power as Regent, on 28 March 2010 appointed, Captain Tengku Datuk Ahmad Farizuanudean Khairi as an additional member of the Council of Succession.
- D** (p) The first respondent on 25 March 2010, removed his uncle, Tengku Sri Utama Raja Yang Mulia Tengku Abdul Aziz bin Tengku Mohd Hamzah, whom the petitioner had appointed to be the President of the Council of Succession, from that position. In his place, the first respondent appointed Tengku Laksamana Kelantan Tengku Abdul Halim Al Haj bin Al-Marhum Sultan Ibrahim as the purported new President of the Council of Succession.
- E** (q) With the removals and new appointments, the membership of the Council of Succession stands at 18 members.
- (r) The petitioner claimed that he is very concerned with the actions of the first respondent as Regent:
- F** (i) in removing from the Council of Succession persons whom the petitioner had personally appointed because of their loyalty to the petitioner and his family, and to the State of Kelantan;
- (ii) in appointing new members of the Council of Succession; and
- G** (iii) in so conducting himself, in his capacity as Regent, as if the petitioner was no longer the Sovereign of the State of Kelantan.
- (s) It is the contention of the petitioner that the first respondent in the circumstances in which he removed the members of, and appointed new members to the Council of Succession, may have:
- H** (i) exceeded his powers as the Regent of the State of Kelantan;
- (ii) usurped the petitioner's royal prerogative, power and authority as the true and one Sovereign of the State; and
- I** (iii) acted in contravention of the Constitution of the State of Kelantan.

[6] After the filing of the first petition, the petitioner claimed that the first respondent had issued several directives purporting to restrict the petitioner's personal liberty and freedom. Aggrieved by these purported directives issued by the first respondent the petitioner filed the second petition. A

[7] In support of the second petition the petitioner pleaded that one of the directives was contained in a letter dated 3 May 2010 issued to the Commander of Royal Malaysian Air Force, Gong Kedak Air Base, Terengganu, directing him not to allow the petitioner to be flown out of the State of Kelantan by any airplane using the Gong Kedak Air Base without the first respondent's prior approval. Another is a letter dated 9 May 2010 issued to Raja Perempuan of Kelantan, directing that the petitioner is not to leave the Istana Mahkota or the State of Kelantan without first securing the first respondent's prior approval and that the petitioner is to be treated only at the Istana Mahkota and by medical specialists from the State of Kelantan or specialists from within the country, unless otherwise advised. By yet another letter dated 17 May 2010 the first respondent directed that the petitioner could only leave for Singapore for medical treatment if a panel of doctors appointed by the Ministry of Health recommends that there is a need for the petitioner to seek medical treatment in Singapore by reason of the lack of expertise available in Malaysia and certifies that the petitioner is in a fit condition to travel. The petitioner claimed these directives have the effect of violating the petitioner's constitutional rights and fundamental liberties. B C D E

[8] The first respondent in his amended defences to both the petitions pleaded, amongst others, the following relevant facts: F

- (a) Due to the petitioner's ill health, the Council of Succession appointed the first respondent as the Regent of the State of Kelantan pursuant to art XXIIA cl 1(b) and cl 3 Second Part of the Laws of the Constitution of Kelantan which appointment has not been revoked. G
- (b) In accordance with art XXIIA(5) Second Part of the Laws of the Constitution of Kelantan, the first respondent is required to continue to act as the Regent until the petitioner recovers from such incapacitation.
- (c) By virtue of the fact that the first respondent has been appointed the Regent, the Laws of the Constitution of Kelantan provides that the first respondent is to be vested with the powers of 'His Royal Highness' within the meaning of the said Constitution. H
- (d) The crux of the dispute relates to Tengku Muhammad Fakhry Petra's discontent at being removed as a member of the Council of Succession by the first respondent in his capacity as the Regent on 16 September 2009. I
- (e) On 16 September 2009 Tengku Muhammad Fakhry Petra was notified by way of a letter from the secretary to the Council of Succession that the

- A** first respondent had in his capacity as the Regent exercised his discretion to revoke Tengku Muhammad Fakhry Petra's appointment as a member of the Council of Succession which was to take effect from 16 September 2009.
- B** (f) Tengku Muhammad Fakhry Petra was not the only person removed as a member of the Council of Succession on 16 September 2009. The following individuals were also removed from the Council of Succession as of 15 September 2009:
- C** (i) Dato' Hj Wan Ismail bin Hj Wan Mohd Salleh;
(ii) Dato' Hj Nik Sulaiman bin Dato' Hj Nik Daud;
(iii) Ir Dato' Tengku Mahmood bin Tengku Abdul Hamid; and
(iv) Dato' Hj Yusoff bin Hj Md Othman.
- D** (g) Tengku Muhammad Fakhry Petra took no immediate action following his removal as a member of the Council of Succession. Rather, he waited until 25 October 2009 to issue a letter to the Secretary of the Council of Succession stating, inter alia, that:
- E** (i) he required an explanation as to what was the basis or reasons for his removal as a member of the Council of Succession;
(ii) his appointment to the Council of Succession was made by the Sultan of Kelantan and only the Sultan of Kelantan could remove him; and
- F** (iii) unless an explanation was provided within seven days from the date of the applicant's letter dated 25 October 2009, he would take it that the Council of Succession had failed and/or neglected to provide any reasons for his removal from the said Council of Succession thereby leaving him no choice but to seek recourse before the courts.
- G**
- (h) On 26 October 2009 the Secretary to the Council of Succession informed Tengku Muhammad Fakhry Petra by way of a letter stating, inter alia, that the decision to remove him was made by the first respondent in his capacity as the Regent on 16 September 2009.
- H**
- (i) Thereafter, in the first respondent's capacity as the Regent, the first respondent appointed the following individuals as members of the Council of Succession to take effect from 16 September 2009 and 17 September 2009:
- I** (i) Dato' Hj Hashim bin Dato' Hj Yusoff;
(ii) Dato' Hj Mohamad Shukri bin Mohamad;
(iii) Dato' Tengku Hj Salwani bt Al-Marhum Sultan Yahya Petra;

- (iv) Dato' Sukri bin Hj Mohamed; A
- (v) Dato' Hj Che Mohd Rahim bin Jusoh; and
- (vi) Kol Dr Mohammad Razin bin Kamarulzaman.
- (j) Given the petitioner's incapacity, the petitioner would not be in a fit and proper condition to 'expressly inform the State Government of Kelantan that he would not be conferring any Titles, Dignities of Honours or issue any proclamations whatsoever'. B
- (k) The first respondent exercise his discretion as the Regent pursuant to art VII Second Part of the Laws of the Constitution of Kelantan in removing Tengku Abdul Aziz bin Tengku Mohd Hamzah as the President of the Council of Succession and appointing Tengku Abdul Halim Al Haj bin Al-Marhum Sultan Ibrahim as the new President of the Council of Succession. C
- (l) In the first respondent's capacity as the Regent, the first respondent may act in his discretion and exercise the right and authority to appoint, revoke or dismiss or discharge any person of any titles, honours or dignities. D
- (m) At no material time has the first respondent conducted himself in such a manner that the Sultan of Kelantan is no longer the Sovereign within the meaning of the Laws of the Constitution of Kelantan. E
- (n) At no material time has the first respondent exceeded his powers as the Regent and usurped the royal prerogative, power and authority of the petitioner. F
- (o) The first respondent issued the directives restricting the movement of the petitioner contained in the letters dated 3 May 2010, 9 May 2010 and 17 May 2010 in his capacity as the Regent of Kelantan and current Head of the Kelantan Royal Household as well as next of kin out of concern for the petitioner's health and wellbeing. G
- (p) The first respondent did not want the petitioner's ill health and medical condition to be utilised by Tengku Muhammad Fakhry Petra for his personal gain.
- (q) On 9 July 2010 the first respondent instructed the office of the Sultan of Kelantan to issue a statement to the effect that the petitioner is free to travel abroad. H
- (r) On 14 July 2010 the petitioner travelled freely to Singapore for medical treatment. At no material time did the first respondent prohibit or restrain the petitioner from leaving the State of Kelantan. I

JURISDICTIONAL OBJECTION

[9] When both the parties appeared at the stage of summons for directions of

A these two suits, learned counsel for the first respondent, Tan Sri Cecil Abraham had indicated that he would be raising a jurisdictional objection before hearing the merits of the two petitions. The objection relates to the question of whether the petitioner has the jurisdiction to refer the questions of law to the Federal Court pursuant to art LXIII(2) First Part of the Laws of the Constitution of Kelantan notwithstanding the fact that there exists a Regency in place. The panel of this court constituted to hear these two petitions on the hearing date henceforth invited arguments from the parties to submit on this issue first as to whether the Federal Court has the jurisdiction to hear the petitions against the first respondent.

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[10] For the purpose of arguments by the parties on the jurisdictional objection of the first respondent, we shall deal with the issues raised under the first petition filed by the petitioner in arriving at our decision. Our decision on this jurisdictional objection by the first respondent in respect of the first petition will equally apply on the jurisdictional objection of the first respondent in respect of the second petition.

CONTENTION OF THE FIRST RESPONDENT

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[11] Learned counsel for the first respondent's primary grounds in support of the jurisdictional objection as in his submission before us can be set out and summarised as follows:

- F (a) At the time of the filing of these two actions, the first respondent was the Regent of Kelantan and is defined as 'His Royal Highness' in accordance with the express provisions of art IV First Part of the Laws of the Constitution of Kelantan. The first respondent is now His Royal Highness, Sultan Muhammad V, the present Sultan of Kelantan.
- G (b) The first respondent as the then Regent of Kelantan carried out the functions as the acting Ruler due to the petitioner's present incapacitation.
- H (c) The first respondent as His Royal Highness carries out numerous royal functions similar to that of the Sultan of Kelantan had His Royal Highness, the Sultan of Kelantan not been incapacitated.
- I (d) Only one person may exercise the powers of 'His Royal Highness' at any one time. Due to the incapacitation of the petitioner and the existence of a Regency, such a power can only be exercised by the first respondent as the Regent of Kelantan at the material time.
- (e) There is no express provision within the Laws of the Constitution of Kelantan or in law which supports the petitioner's contention that the fact that the first respondent was appointed by the Council of Succession

is of a lesser effect than had the first respondent been appointed Regent of Kelantan by the Sultan of Kelantan.

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- (f) Pursuant to art VII Second Part of the Laws of the Constitution of Kelantan, the first respondent as His Royal Highness acting in his discretion has the right and authority to revoke the appointment of or dismiss and discharge any members of the Council of Succession.

B

- (g) The petitioner has no jurisdiction to refer a question of law pursuant to art LXIII(2) First Part of the Laws of the Constitution of Kelantan pending the existence of a Regency due to the incapacitation of the petitioner.

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CONTENTION OF THE PETITIONER

[12] Learned counsel for the petitioner, Encik Azhar bin Azizan @ Harun in reply to the first respondent's jurisdictional objection relied, inter alia, on the grounds which can be summarised as follows:

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- (a) Notwithstanding the Council of Succession's appointment of the first respondent as Regent on 24 May 2009, the petitioner is still the Sultan, Sovereign and Ruler of the State of Kelantan.

E

- (b) The first respondent as the Regent cannot exist on his own or in vacuum. He exists because the Sultan is incapacitated. Just because the Sultan is incapacitated it does not mean that the petitioner is not in a position to ask the Federal Court for its opinion on the questions framed.

F

- (c) The first respondent as the Regent does not take over exclusively the role of the Sultan. The Regent being a caretaker ruler can only perform those duties which a Sultan is required by the Laws of the Constitution of Kelantan to perform but which he cannot do because of his incapacitation. The petitioner as the Sultan does not surrender all his powers to the Regent.

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- (d) The first respondent as the Regent is not conferred the full powers of the Sultan whilst acting as Regent. The Regent is not a Sultan, Sovereign or Ruler. The Regent is only to have the right to exercise the powers which are necessary to attend to the affairs of the state.

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- A (e) The definition of 'High Royal Highness' in art IV First Part of the Laws of the Constitution of Kelantan to include the Regent is subject to an important rider, that is the Regent can only fall within the definition of 'His Royal Highness' 'where the context admits'. The phrase 'His Royal Highness' does not necessarily refer to the Regent under the relevant provisions of the Laws of the Constitution of Kelantan. The phrase 'His Royal Highness' will always refer to the Sultan.
- B

DECISION

- C [13] We shall now deal with the factual circumstances and the questions of law posed for our determination under the first petition in deciding whether there is merit on the jurisdictional objection raised by the first respondent. The petitioner's principal complaint which has brought about the parties before this court is focused on the first respondent's purported exercise of his discretionary powers as a Regent in revoking Tengku Muhammad Fakhry Petra's appointment as a member of the Council of Succession, amongst others, and in effecting the appointment of other individuals as the new members of the Council of Succession. To the petitioner, the first respondent is not empowered to exercise such a discretion in the performance of his royal functions as a Regent in the revocation and appointment of the members of the Council of Succession. Instead it was argued for the petitioner that these powers can only be exercised by the petitioner personally as the Sultan of Kelantan.
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- E
- F [14] We are of the view that as the then Regent of Kelantan, the first respondent is vested with all the powers of 'His Royal Highness' within the meaning of the First Part and the Second Part of the Laws of the Constitution of Kelantan. There is no distinction between the powers exercised by the first respondent when he was the Regent of Kelantan and the powers exercised by a reigning Sultan regardless of whether the first respondent was appointed by the Council of Succession or by the then Sultan of Kelantan.
- G
- H [15] It is the contention of the petitioner that any decision made by the first respondent in the exercise of his duties as the Regent during the incapacitation of the Sultan has a somewhat lesser effect solely because he was appointed by the Council of Succession instead of being appointed by the Sultan of Kelantan himself. We would like to state here that amongst the duties of the Council of Succession as provided under arts VI and IX Second Part of the Laws of the Constitution of Kelantan, are to confirm the heir as reigning Sovereign and to choose and appoint a Sovereign on failure of eligible heirs or refusal to confirm any of the eligible heirs. Article XXIIA(3) Second Part of the Laws of the Constitution of Kelantan further provides that the Council of Succession shall appoint a Regent or Council of Regency in the case of incapacitation of the Sovereign. It is observed that the Council of Succession only exercises its duties
- I

and powers in circumstances when there is no reigning Sovereign or when the Sovereign is incapacitated. In this context therefore it would be incorrect for the petitioner to make a comparison as to the status of a Regent appointed by the Sovereign with that of a Regent appointed by the Council of Succession.

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[16] It is also to be noted that there is no express provision within the Laws of the Constitution of Kelantan which lends support to the petitioner's contention that the appointment of the Regent by the Council of Succession is of lesser effect than had the Sovereign appointed the first respondent as the Regent. Such an assertion is unsupported in law. Moreover we are of the view that if the same Council of Succession has the power conferred by the Laws of the Constitution of Kelantan to choose and confirm the next Sovereign and determine the capacity of the Sultan of Kelantan himself, it would necessarily follow that a Regent appointed by the very same Council of Succession as in this case would have the same power to exercise the royal functions provided under the Laws of the Constitution of Kelantan.

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[17] The petitioner further contended that different powers would be vested on a Regent depending on the mode in which the Regent is appointed, that is whether appointed by the Council of Succession or by the Sultan of Kelantan himself as the Sovereign. This is so as according to the petitioner the alleged crucial phrase of allowing the Regent to exercise the functions as Ruler is missing in art XXIIA(3) Second Part of the Laws of the Constitution of Kelantan unlike as provided for in art XXIIA(2) and art XXIIA(4) Second Part of the Laws of the Constitution of Kelantan whenever the Sovereign himself appointed a Regent to exercise his functions. For easy reference we reproduce in full the provision of art XXIIA Second Part of the Laws of the Constitution of Kelantan as follows:

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XXIIA

(1) There shall be a Regency in the State under the following conditions, that is to say —

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- (a) if the Sovereign shall have occasion to be absent from the State for more than thirty days;
- (b) if the Sovereign shall be incapacitated from attending to the affairs of the State; or
- (c) if the Sovereign is elected to the office, or exercise the functions, of the Yang di-Pertuan Agong for a period exceeding fifteen days.

H

- (2) In the case of the intended absence of the Sovereign He shall appoint a Regent or Council of Regency as to Him seems most expedient to exercise His functions during His absence from the State.
- (3) In the case of the incapacitation of the Sovereign the Council of Succession shall appoint a Regent or Council of Regency as to them seem most expedient

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- A and if it shall be necessary to appoint a Council of Regency the provisions of
Clauses (2) and (3) of Article XIX of this Part shall apply to such
appointment.
- B (4) The Sovereign shall appoint a Regent or Council of Regency as to Him seems
expedient to exercise His functions as a Ruler in the event of His being elected
to the office of Yang di-Pertuan Agong or of His exercising the functions of
Yang di-Pertuan Agong for a period exceeding fifteen days.
- C (5) Such Regent or Council of Regency shall cease to act upon the return of the
Sovereign to the State or upon His recovery from incapacitation or His
ceasing to hold the office or exercise the functions of Yang di-Pertuan Agong,
as the case may be.

D [18] We are of the view that the above contention of the petitioner that
different powers are vested on a Regent appointed by the Council of Succession
when compared with the powers vested on a Regent appointed by the
petitioner himself as a Sovereign is unsustainable in the circumstances of this
case. The petitioner seems to place much emphasis on specific phrases or words
used in the Laws of the Constitution of Kelantan and consistently refers to the
first respondent as the 'Regent' which the petitioner distinguishes from the
term 'Sovereign'. A perusal of the Laws of the Constitution of Kelantan would
show that there is undoubtedly a distinction between a Regent and a Sovereign.
E We agree that the status of a Regent is not equal to a Sultan, Sovereign and
Ruler of the State as contended by learned counsel for the petitioner. However,
we find that the distinction between these two words 'Regent' and 'Sovereign'
F do not have any effect on the royal prerogatives of the first respondent to
appoint or revoke the appointment of any members of the Council of
Succession under the Laws of the Constitution of Kelantan and more
importantly in this context of seeking to refer a question of law pursuant to
art LXIII(2) First Part of the Laws of the Constitution of Kelantan.

G [19] Coming back to the provision of art XXIIA Second Part of the Laws of
the Constitution of Kelantan, it is to be noted that contextually, different terms
are used depending on whether the Regent is appointed under limbs (a), (b) or
(c) of cl (1) of the said article. In the case of 'intended absence' under limb (a),
H the Regent is to exercise 'His functions during his absence from the State'. In
the case of the Sovereign being elected as Yang di-Pertuan Agong or exercising
the functions of the Yang di-Pertuan Agong under limb (c), the Regent is to
exercise 'His functions as a Ruler'. We find no such limitations are imposed
under limb (b) when the Regent is appointed upon the Sovereign being
I incapacitated. On this point we wholly agree with the views expressed by
Mohamad Ariff Yusof J in the High Court of Kuala Lumpur Judicial Review
Application No R3-25-379 of 2009 between *Tengku Muhammad Fakhry Petra
Ibni Sultan Ismail Petra v Yang Maha Mulia Pemangku Raja Kelantan & Ors*
[2011] 1 MLJ 128 wherein in delivering his written ruling and decision on 29

January 2010 on the question whether the subject matter of the application brought about by the applicant Tengku Muhammad Fakhry Petra against the Regent of Kelantan is 'justiciable' at p 24 had this to say:

Contextually, one can conclude that the Regent is intended to be constitutionally vested with all the necessary powers of the Sovereign during the period of incapacitation. The context certainly does not exclude the exercise of powers under art VII. Nevertheless this power is temporary in nature and exists only during the period of incapacitation of the Sovereign. In this context, the definition of 'His Royal Highness' would validly require the inclusion and not the exclusion of the Regent.

[20] The first respondent in the present case is also referred to in the Laws of the Constitution of Kelantan as 'His Royal Highness'. The term 'His Royal Highness' is defined under art IV First Part of the Laws of the Constitution of Kelantan as follows:

... the Sultan of the State and includes His Successors and, where the context admits, His Predecessors; and, *in the case of a Regency, includes the Regent*, or, if there is a Council of Regency, such Council. (Emphasis added.)

On the other hand, the term 'Sovereign' is defined under art IV Second Part of the Laws of the Constitution of Kelantan to mean as the Sultan and Ruler of Kelantan.

[21] Learned counsel for the petitioner argued before us that the definition of 'His Royal Highness' in art IV First Part of the Laws of the Constitution of Kelantan to include the Regent is subject to an important rider, that is the Regent can only fall within the definition of 'His Royal Highness' 'where the context admits'. According to him the phrase 'His Royal Highness' does not necessarily refer to the Regent under all the provisions of the Laws of the Constitution of Kelantan, but the phrase 'His Royal Highness' will always refer to the Sultan. Learned counsel for the petitioner further contended that the Regent was only to have the right to exercise the powers which are necessary to attend to the affairs of the state as provided for in the First Part of the Laws of the Constitution of Kelantan, namely all the executive authority of the Sultan as stated in art X First Part of the Laws of the Constitution of Kelantan. To fortify his argument on this point learned counsel submitted that the First Part of the Laws of the Constitution of Kelantan deals only in respect of attending to the affairs of the State. The Second Part of the Laws of the Constitution of Kelantan on the other hand deals with succession of heirs, award of titles and dignities and royal prerogative. These are powers which are personal to the Sultan and only exercisable by him. The Regent therefore is not conferred with these powers under the Second Part of the Laws of the Constitution of Kelantan.

- A** [22] With respect we could not agree with the above contention of the petitioner. A closer look at the Laws of the Constitution of Kelantan would reveal that in most of the provisions with regard to the act of carrying out royal functions the term ‘His Royal Highness’ is used and this term ‘His Royal Highness’ appears in both the First Part and the Second Part of the Laws of the
- B** Constitution of Kelantan. This much is clear from a reading of the relevant provisions of the Laws of the Constitution of Kelantan, amongst others can be highlighted as follows:
- C** (a) Article VI First Part of the Laws of the Constitution of Kelantan — His Royal Highness as the Head of Religion of the State.
- (b) Article XI First Part of the Laws of the Constitution of Kelantan — Executive authority to be in the name of His Royal Highness.
- D** (c) Article XII First Part of the Laws of the Constitution of Kelantan — The appointment of the Menteri Besar by His Royal Highness.
- (d) Article XIII First Part of the Laws of the Constitution of Kelantan — The appointment of the State Secretary, the State Legal Advisor and the State Financial Officer by His Royal Highness.
- E** (e) Article XV(2)(b) First Part of the Laws of the Constitution of Kelantan — The withholding of consent for the dissolution of the State Legislative Assembly.
- F** (f) Article XV(2)(f) First Part of the Laws of the Constitution of Kelantan — The appointment of any persons to Malay customary ranks, titles, honours and dignities and the designation of the functions appertaining thereto.
- G** (g) Article XV(2)(g) First Part of the Laws of the Constitution of Kelantan — The regulation of royal courts and palaces.
- (h) Article XVI First Part of the Laws of the Constitution of Kelantan — The appointment of a State Executive Council.
- H** (i) Article XXVIIA First Part of the Laws of the Constitution of Kelantan — The power of pardon.
- (j) Article LXIII First Part of the Laws of the Constitution of Kelantan — The right to refer questions of law to the Federal Court.
- I** (k) Article IV(4) Second Part of the Laws of the Constitution of Kelantan — The right to refer questions of law to the Federal Court.
- (l) Article VII Second Part of the Laws of the Constitution of Kelantan — The appointment or constitution of the members of the Council of Succession.

- (m) Article VIIA Second Part of the Laws of the Constitution of Kelantan — The requirement of the taking of oath in the sitting and voting of the Council of Succession. A
- (n) Article XXXVI Second Part of the Laws of the Constitution of Kelantan — Establishment of council of advisers. B
- (o) Article XLIII Second Part of the Laws of the Constitution of Kelantan — Conferment of titles and dignities and institute orders and badges of honour and dignity.
- (p) Article XLIV Second Part of the Laws of the Constitution of Kelantan — The creation of Bendahara, Temenggong, Laksamana Panglima and other ranks and titles formerly used. C

[23] It is our judgment having noted that the definition of ‘His Royal Highness’ includes the Regent, it is therefore clear that the Laws of the Constitution of Kelantan had envisaged for the Regent to have all the powers and to carry out the royal functions as the Sultan of Kelantan would have had His Royal Highness the Sultan of Kelantan not been incapacitated. D

[24] We are of the view the contention of the petitioner that the powers vested on a Regent in carrying out his royal functions are only confined to the First Part of the Laws of the Constitution of Kelantan is untenable in the circumstances of this case. We do not think it should be interpreted in the way as suggested by learned counsel for the petitioner, that is interpreting the provisions of the Laws of the Constitution of Kelantan according to the respective First Part and Second Part and not interpreting them as a whole. In this regard we are mindful of the fact that the answers to the questions posed to us turn essentially on the construction to be accorded to the relevant provisions of the State Constitution. For this we would therefore take guidance from the established principles applicable to the interpretation of a Constitution. Basically, a Constitution being the supreme law of a state or federation, it has to be interpreted differently from ordinary statute. On this point the Privy Council in *Hinds & Ors v The Queen; Director of Public Prosecutions v Jackson; Attorney General of Jamaica (Intervener)* [1976] 1 All ER 353, inter alia, said: E

To seek to apply to constitutional instruments the canons of construction applicable to ordinary legislation in the fields of substantive criminal or civil law would ... be misleading. F

[25] Still on the important guide in interpretation of the Constitution, we would like to quote a passage of the judgment of the learned Chief Judge of Malaya, Arifin Zakaria in *Dato’ Seri Ir Hj Mohammad Nizar bin Jamaluddin v Dato’ Seri Dr Zambry bin Abdul Kadir (Attorney General, intervener)* [2010] 2 MLJ 285 where at p 299 he had this to say: G

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A The Constitution must be considered as a whole, and so as to give effect, as far as possible, to all its provisions. It is an established canon of constitutional construction that no one provision of the Constitution is to be separated from all the others, and considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purpose of the instrument. An elementary rule of construction is, that if possible, effect should be given to every part and every word of a Constitution and that unless there is some clear reason to the contrary, no portion of the fundamental law should be treated as superfluous.

C [26] The question that has also to be answered here is whether during the incapacitation of the petitioner and during the pendency of the Regency the petitioner may exercise the powers of 'His Royal Highness' under the Laws of the Constitution of Kelantan? We would answer this question in the negative.

D This is because due to the incapacitation of the petitioner as the then Sultan of Kelantan, it is the Regent of Kelantan and the Regent of Kelantan alone who is to exercise the powers attributed to 'His Royal Highness' under the Laws of the Constitution of Kelantan. The petitioner may only exercise such powers upon returning to the State of Kelantan and assuming office as the Sultan of Kelantan.

E On the facts before us the petitioner did not do so upon returning to the State of Kelantan on or about March 2010. In fact the petitioner remains incapacitated and the first respondent continued to act as the Regent of Kelantan. In the light of the above, the petitioner is not permitted to exercise any power vested with 'His Royal Highness' whilst there exists a Regency.

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[27] We are of the view that there can be only one individual attending to the affairs of the State of Kelantan at any one time. In this instance, due to the incapacitation of the petitioner, the first respondent as the Regent of Kelantan and the acting Ruler of the State of Kelantan is the only person entitled to exercise the powers of 'His Royal Highness' within the meaning of the Laws of the Constitution of Kelantan. The petitioner being incapacitated cannot be exercising such a power unless he has recovered from such incapacitation. It therefore follows that the petitioner has no locus to refer a question of law to the Federal Court pursuant to art LXIII(2) First Part of the Laws of the Constitution of Kelantan whilst the first respondent is the Regent, as the power to do so is vested solely in the hands of the first respondent until the Regency is brought to an end and the petitioner resumes his role as the Sultan of Kelantan.

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CONCLUSION

[28] For the reasons abovestated we allow the jurisdictional objection of the

first respondent. Consequentially, having allowed this jurisdictional objection we therefore dismiss both the petitions with no order as to costs. **A**

Both petitions dismissed with no order as to costs.

Reported by Kanesh Sundrum **B**

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